

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

**DESIGN BASICS, LLC
and CARMICHAEL & DAME
DESIGNS, INC.,**

Plaintiffs,

v.

MALENO BUILDERS, INC.

Defendant.

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CIVIL ACTION NO. 1:16-cv-94

JURY DEMANDED

PLAINTIFFS' ORIGINAL COMPLAINT

Design Basics, LLC and Carmichael & Dame Designs, Inc., Plaintiffs, file this Complaint against Maleno Builders, Inc., Defendant, and for their causes of action allege the following:

Parties

1. Design Basics, LLC is a Nebraska Limited Liability Company. Under Articles of Merger executed on July 1, 2009, Design Basics, LLC is the successor by merger to Design Basics, Inc., and as such is the owner of all assets (including copyrights, trade and service names, trade and service marks, and all causes of action) that Design Basics, Inc. owned as of that date. Design Basics, LLC and its predecessor (Design Basics, Inc.) will hereinafter be referred to as "Design Basics."

2. Carmichael & Dame Designs, Inc. is a Texas corporation with its principal place of business in The Woodlands, Texas. Carmichael & Dame Designs, Inc. will hereinafter be referred to as “Carmichael & Dame.”¹

3. Defendant, Maleno Builders, Inc., “Maleno” or “Defendant,” is a Pennsylvania corporation with its principal place of business in Erie, Pennsylvania.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction of this case under 28 U.S.C. § 1338 because this action arises under federal copyright law, 17 U.S.C. § 101 et seq.

5. Venue is proper in this District under 28 U.S.C. § 1400(a) because the Defendant may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District and the Defendant resides and does business in this District.

Factual Background

6. Plaintiffs are building design firms engaged in the business of creating, marketing, publishing, and licensing the use of “architectural works” (as that term is defined in the Copyright Act and the Architectural Works Copyright

¹ Design Basics and Carmichael & Dame will be referred to together as “Plaintiffs.”

Protection Act of 1990 (“AWCPA”)) and technical drawings depicting architectural works. The firms own copyrights protecting the architectural works and technical drawings they have created. Carmichael & Dame markets its architectural works, and Design Basics markets both its and Carmichael & Dame’s architectural works.

7. Design Basics is the author and the owner of all copyrights in the following designs: Plan No. 5148 – Bowden; Plan No 2618 – Paisley; Plan No. 1380 – Paterson; Plan No. 1870 – Bristol; Plan No. 2638 – Linden; Plan No. 2154 – Galvin; Plan No. 2235 – Albany; Plan No. 1553 – Kendall; Plan No. 1769 – Hampton; Plan No. 1752 – Lancaster; Plan No. 2246 – Augusta; Plan No. 2100 – Fenton; Plan No. 2236 – Bermier; Plan No. 2219 – Shannon; Plan No. 1859 – Richmond; and Plan No. 2316 – Franklin.²

8. Carmichael & Dame is the author and the owner of all copyrights in the following design: Plan No. 9170 – Buckland Showcase.³

9. The foregoing works described in paragraphs 7-8 above will be referred to collectively as the “Copyrighted Works.”

10. For many years, the Copyrighted Works have been widely published nationwide, including in this District, in numerous Design Basics’ plan books and

² See Exhibit A, Design Basics’ Certificates of Copyright Registration and Application for Registration.

³ See Exhibit B, Carmichael & Dame’s Certificates of Copyright Registration.

publications. Additionally, each of the Copyrighted Works has been published in various online publications, including www.designbasics.com and www.carmichaelanddamedesigns.com.

11. Each of the Copyrighted Works constitutes original material that is copyrightable under federal law.

12. Design Basics is currently, and at all relevant times has been, the sole owner of all right, title, and interest in and to the Copyrighted Works described in paragraph 7.

13. Carmichael and Dame is currently, and at all relevant times has been, the sole owner of all right, title, and interest in and to the Copyrighted Works described in paragraph 8.

14. Defendant engaged, at least in part, in the business of creating, publishing, distributing, and advertising residential home designs through traditional print media, on the internet on sites such as www.malenodevelopment.com, and in marketing, advertising, constructing, and selling homes built according to such designs.

15. Defendants published, distributed, marketed, and advertised certain architectural designs for residential homes, each consisting of a floor plan and exterior elevations that Defendants have identified and marketed under the following model names:

- The Gabriel;
- The Marquee;
- The Millcreek;
- The Mirage; and
- The Washington.

Plaintiffs' plans listed in Paragraph 7 and 8 are believed to be design infringements built by Defendant. Plaintiffs observed photographs and images of homes built from these plans on Defendant's website and in Defendant's subdivisions, and at this time, do not have enough information to properly identify all of Defendant's plan names.

16. Defendants were actually aware of Design Basics and the works that Design Basics markets. Defendants first purchased one of Design Basics' home plan books in 1996 and received additional home plan publications from Plaintiff through Design Basics' customary business practices to distribute periodic publications to its customer mailing lists.

17. Defendant violated and continues to violate Plaintiffs' exclusive rights in each of the Copyrighted Works (including the right to reproduce, the right to prepare derivative works, and the right to sell) by copying, publishing, distributing, advertising, marketing, selling, or constructing in the marketplace plans, drawings, and houses that were copied or otherwise derived from the Copyrighted Works, including, but not limited to:

- a. Defendants' plan, Gabriel (and any predecessors, copies, or derivatives of this model) infringes on Design Basics Plan No. #2638 – Linden (and any derivatives thereof).
- b. Defendants' plan, Marquee (and any predecessors, copies, or derivatives of this model) infringes on Design Basics Plan No. #2618 – Paisley (and any derivatives thereof).
- c. Defendants' plan, Millcreek (and any predecessors, copies, or derivatives of this model) infringes on Carmichael & Dame Plan No. #9170 – Buckland Showcase (and any derivative thereof)
- d. Elevation for Defendants' plan, Mirage (and any predecessors, copies, or derivatives of this model) is very similar to and may infringe on Design Basics Plan No. #5148 – Bowden (and any derivatives thereof).
- e. Defendants' plan, Washington (and any predecessors, copies, or derivatives of this model) infringes on Design Basics Plan No. #1380 – Paterson (and any derivatives thereof).

Cause of Action: Copyright Infringement

18. Plaintiffs complain of Defendant for copyright infringement, and incorporate paragraphs 1 through 17 above by reference.

19. Defendant's construction and sale of homes and creation of associated design and construction drawings based on Plaintiffs' Copyrighted Works has infringed and continues to infringe Plaintiffs' copyrights of the Copyrighted Works.

20. Defendant's creation and publication of non-pictorial representations based on Plaintiffs' Copyrighted Works have infringed and are infringing Plaintiffs' copyrights in the Copyrighted Works.

21. Plaintiffs are entitled to recover the actual damages it suffered as a result of the foregoing infringement and all of Defendant's profits from such infringement under 17 U.S.C. § 504(b).

22. In the alternative to the actual damages and infringer profits sought above, Plaintiffs are entitled to an award of statutory damages for all infringements of Plaintiffs' Copyrighted Works under 17 U.S.C. § 504(c).

23. Under 17 U.S.C. § 505, Defendant is liable for Plaintiffs' costs and reasonable attorneys' fees incurred in this action.

24. Additionally, under 17 U.S.C. § 502, Plaintiffs are entitled to preliminary and permanent injunctions prohibiting Defendant from further infringing on its copyrights, including but not limited to the further use of infringing plans; creation or use of derivative plans; and construction, sale, or rental of infringing structures.

25. Furthermore, this Court should issue an order under 17 U.S.C. § 503 directing the United States Marshal's Service to (a) impound all copies of the Copyrighted Works in possession of Defendant or its respective agents or contractors in violation of Plaintiffs' exclusive rights, and (b) upon final hearing of this case, destroy or otherwise dispose of those copies.

Conditions Precedent

26. With respect to all counts, Plaintiffs generally aver that all conditions precedent to their rights of recovery have occurred or been performed, or have been waived or excused by Defendant.

Jury Demand

27. Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs respectfully demand trial by jury of all issues so triable.

Prayer

WHEREFORE, Plaintiffs pray that Defendant, Maleno Builders, Inc., be cited to appear and answer, and that upon final trial they have and recover from Defendant as set forth above, that they have permanent injunctive relief against Defendant as requested herein, and that they have such and other relief as they may show themselves to be entitled.

Dated: April 25, 2016

Respectfully submitted,

/s/John C. Hansberry

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Pro hac motions pending

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